

Processing of personal data under the insurance contract

And its consequences for insurance distribution

Maria Inês de Oliveira Martins



i Personal data as a protected expression of human personality?

vs.?

8(1) CFREU;
16(1) TFUE

GDPR

Protected as a fundamental right

Processing unlawful except when based upon specific grounds

ii Personal data as counter-performance?

Proposal
DCSDC

Protection as provided by contract law

Processing as a basis for the corresponding right to performance

i Personal data as a protected expression of human personality?

GDPR

6.º Lawfulness of processing

1. Processing shall be **lawful only if and to the extent** that at least one of the following applies:

vs.?

(a) the data subject has **given consent** to the processing of his or her personal data for **one or more specific purposes**;

(b) processing is **necessary for the performance of a contract** to which the data subject is party or in order to **take steps at the request of the data subject prior to entering into a contract**;

(...)

ii Personal data as counter-performance?

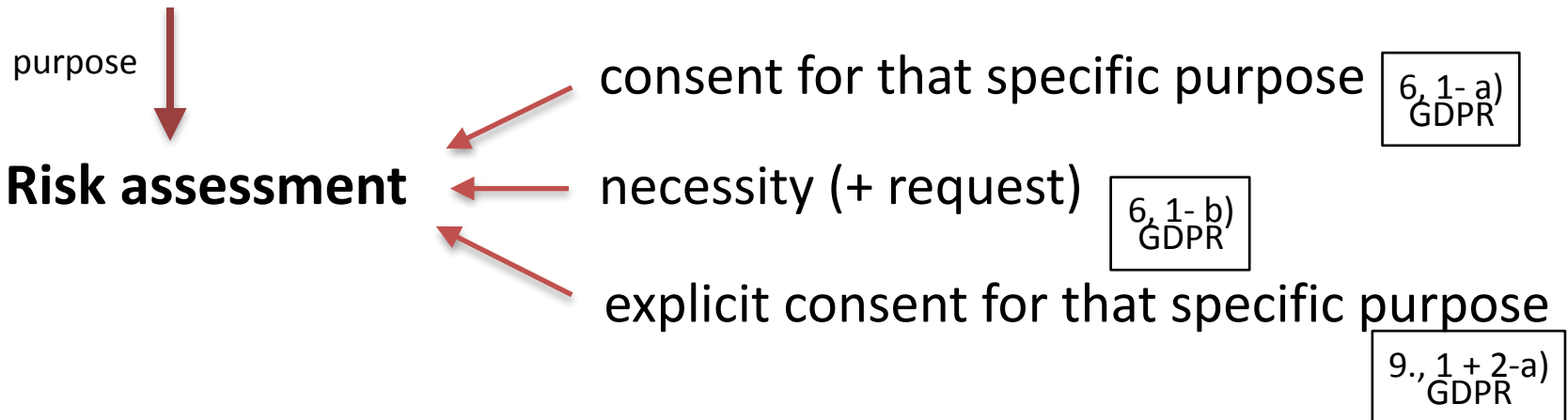
Proposal
DCSDC

3.º Scope

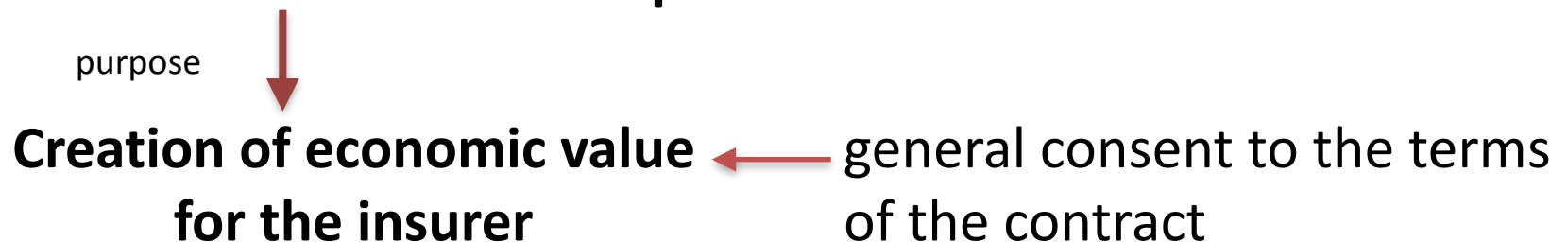
1. This Directive shall apply to any contract where the supplier supplies digital content to the consumer or undertakes to do so and, in exchange, a price is to be paid or the **consumer actively provides counter-performance** other than money in the **form of personal data or any other data**.

Within the insurance contract

i) Personal data as a protected expression of human personality



ii) Personal data as counter-performance?



① Personal data as a protected expression of human personality



Risk assessment

Problems posed by continuous risk monitoring

different basis for the calculus of the premium?

refusal to prolongue/renew the contract

further use of (a much bigger pool of) data

5., 1-b) GDPR

ii Personal data as counter-performance?



Creation of economic value
for the insurer



lower premium

Lawful?

7.º GDPR (Conditions for consent)

4. When assessing **whether consent is freely given**, utmost account shall be taken of whether, inter alia, **the performance of a contract**, including the provision of a service, is **conditional on consent to the processing of personal data that is not necessary for the performance of that contract**.

Limits

(~ i)

consent for that **specific purpose?**

6. 1-a)
GDPR

explicit consent for that **specific purpose?**

9., 1 + 2-a)
GDPR

principles relating to processing of personal data

5.
GDPR

① Personal data as a protected expression of human personality



Risk assessment

Problems posed by continuous risk monitoring

Lawful?

7.º GDPR (Conditions for consent)

(~ ②)

4. When assessing **whether consent is freely given**, utmost account shall be taken of whether, inter alia, **the performance of a contract**, including the provision of a service, **is conditional on consent to the processing of personal data that is not necessary for the performance of that contract.**

Insurance distribution

Insurance distribution Directive

20.º (Advice, and standards for sales where no advice is given)

1. Prior to the conclusion of an insurance contract, the insurance distributor shall specify, on the basis of information obtained from the customer, the demands and the needs of that customer and shall provide the customer with objective information about the insurance product in a comprehensible form to allow that customer to make an informed decision.

Any **contract proposed** shall be **consistent with the customer's insurance demands and needs**.

Where advice is provided prior to the conclusion of any specific contract, the insurance distributor shall provide the customer with a personalised recommendation explaining why a particular product would **best meet the customer's demands and needs**.

2. The details referred to in paragraph 1 shall be modulated according to the **complexity of the insurance product being proposed and the type of customer**.

Thank you for your attention!